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सं. 16]

नई दिल्ली, शनिवार, मई 4, 1991/वैशाख 14, 1913

No. 16]

NEW DELHI, SATURDAY, MAY 4, 1991/VAISAKHA 14, 1913

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में  
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a  
separate compilation

## भाग II—खण्ड 3—उप-खण्ड (iii) PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों के अधिकार) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं  
Orders and Notifications issued by Central Authorities (other than Administrations of Union  
Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 27 अप्रैल, 1991

प्रा.प्र. 74:—लोक प्रतिनिधित्व अधिनियम, 1951  
(1951 का 43) की धारा 106 के अनुसूचन में, निर्वाचन  
आयोग 1990 की निर्वाचन प्रज्ञा सं. 5/90 में पंजाब  
और हरियाणा उच्च न्यायालय, चण्डीगढ़, के तारीख 20-2-  
1991 का निर्णय एतद्वारा प्रकाशित करता है।

(संलग्न आदेश अंग्रेजी में छापे हैं)।

[सं. 82/हरि.-लो.स./5/90]

आदेश से,

धनश्याम खोहर, प्रवर सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 27th April, 1991

O.N. 74.—In pursuance of Section 106 of the Representa-  
tion of the People Act, 1951 (43 of 1951), the Election  
Commission hereby publishes the Judgement dated the 20th

February, 1991 of the High Court of Punjab and Haryana at  
Chandigarh, in Election Petition No. 5 of 1990.

[No. 82/HN-HP/5/90]

By Order,

GHANSHYAM KHOHAR, Under Secy.

IN THE HIGH COURT OF PUNJAB & HARYANA

CHANDIGARH

CIVIL MISC SIDE

ELECTION PETITION NO. 5 of 1990

and CIVIL MISC NO. 6-E of 1990

IN THE MATTER OF :

Hardwari Lal son of Sh. Nathu Ram

Resident of Sonepat Road, Rohtak,

Distt. Rohtak (now residing in Delhi-6/1, Roop Nagar,  
Delhi-110007).  
Petitioner

Va.

1. Sh. Kartar,

V & P.O. Achhej, Distt. Rohtak.

2. Sh. Kuldeep  
118/14, Kirpal Nagar, Rohtak.
3. Sh. S. Krishan,  
V&P.O. Dighal, Teh. Jhajjar  
Distt. Rohtak.
4. Sh. Jaipal,  
V. & P.O. Nidana,  
Rohtak.
5. Sh. Zile Singh  
V. & P.O. Sampla,  
Distt. Rohtak.
6. Sh. Tarif Singh  
V.&P.O. Bharan  
Distt. Rohtak
7. Sh. Devi Lal,  
V.&P.O. Chetala,  
Distt. Sirsa.
8. Sh. Dharam Chand  
V. & P.O. Dharoli, Teh, Kosli  
Distt. Rohtak.
9. Sh. Prem Kumar,  
V.&P.O. Sampla,  
Distt. Rohtak.
10. Sh. Balbir S/o Prithi,  
V. & P.O. Kharawar.  
Distt. Rohtak.
11. Sh. Balbir s/o Molar  
V.&P.O. Islangarh  
P.O. Chhuchhakwas, Distt. Rohtak.
12. Sh. Bhale Ram,  
V.&P.O. Paksama.  
Rohtak.
13. Sh. Mohinder Singh,  
V.&P.O. Tatauda, Teh. Jhajjar  
Distt. Rohtak.
14. Sh. Roshan Lal  
18/129-A, Bashtipura,  
Rohtak.
15. Lachmi Naitain,  
V. Patasni,  
P.O. Dadanpur, Teli, Jhajjar,  
Rohtak.
16. Sh. Ved Parkash Vats,  
V.&P.O. Bamnola, Distt. Rohtak.
17. Sh. Krishan,  
M-30, Shastri Nagar,  
Delhi-52,
18. Sh. Sat Pal,  
458/19 Shakti Nagar,  
Rohtak.
19. Sh. Sughasi Chand  
3/631, Babra Mohalla, Rohtak.
20. Sh. Subhash Chander,  
V & P.O. Chandi, Teh. Meham,  
Distt. Rohtak.
21. Sh. Surender Dutt.  
70/28, Adarsh Nagar, Rohtak.
22. Sh. Suresh Chand,  
H No. 450/33, Rohtak.
23. Sh. Hawa Singh,  
Sugar Mill, Hari Singh Colony, Rohtak.
24. Chief Election Commissioner,  
Election Commission of India,  
Parliament Street, New Delhi.

Election Petition under the provisions of part 6, chapter 2, Sections 80 to 84 and 100 of the representation of peoples Act, 1951, praying that;

- i. that the election of Respondent No. 7 be declared void on the ground that he has committed a variety of corrupt practices; mentioned in Section 123 of the Peoples Representation Act.
- ii. That Respondent No. 7 be disqualified o' contest any election during the next 6 years.
- iii. that the persons other than Respondent No. 7 be named as being guilty of having committed corrupt practices.
- iv. that the petitioner be declared as elected, after the perusal of all records pertaining to the election in question in the context of the petitioner's allegations in the petition and after recounting and scrutiny of votes cast/declared invalid.
- v. That any other order which the Hon'ble Court may be pleased to deem fit and proper in the special circumstances of the case be passed.
- vi. That the Chief Election Commissioner, Respondent No. 24 be immediately directed not to hold the bye-election occasioned by the vacation of the seat by Respondent No. 7, to obviate the possible complications which may arise from a bye-election being held pending the decision of this election petition.
- vii. That the cost of the petition be awarded to the petitioner.
- viii. That all the records pertaining to the election, in question, be ordered to be sealed for subsequent inspection, since the Returning Officer is soon to retire will have no scruples where the interests of his relative Ch. Devi Lal (Respondent No. 7) are concerned.

Application under Section 83 of the Representation of People Act read with order 6 Rule 16 C.P.C. praying that the paras 3 to 11 and 14 to 21 are liable to be struck off under Order 6 Rule 16 C.P.C. and Section 83 of the Representation of People Act, 1951. The awarding respondent would file the written statement after the disposal of the application as otherwise the case of the answering respondent would be greatly prejudiced.

Dated the 20th Feb. 1991

PRESENT :

THE HON'BLE MR. JUSTICE M. S. LIBERHAN  
For the Petitioner—Mr. D. D. Gupta, Advocate.  
For the Respondents—Mr. S. C. Mohunta Sr. Adv. with  
Mr. N. K. Kapoor and A. Mohunta Adv.

#### JUDGEMENT

M. S. Liberhan, J.

This order of mine will dispose of civil miscellaneous No. 6-E of 1990 as well as preliminary objections to the effect that paragraphs 4, 4(i), 4(ii), 4(iii), 4(iv), 5(i), 5(ii), 5(iii), 5(iv), 6, 7, 8, 9, 9(i) to 9(iv), 10 and its sub-paragraphs (i) to (iii), 11, 14, 15, 16, 17 and 19 are liable to be struck off on the ground that they are scandalous, frivolous and lacking in the material facts and particulars, election petition discloses no cause of action.

2. The civil miscellaneous was argued for a number of dates from time to time. When the written statement was filed and the preliminary objections were taken, counsel for the parties argued the case at length.

3. The election of the returned candidate has been challenged for commission of corrupt practices of undue influence, obtaining assistance from the Gazetted Officers and other prohibited class of Officers for furtherance of his prospects of election and booth capturing by him.

—Respondents.

4. In the course of arguments, the petitioner, on 12-1-1991 stated that he confines his challenge to the election of the returned candidate for commission of corrupt practices of obtaining assistance by the returned candidate from Deputy Commissioner and Police force for furtherance of his prospects of election, as defined by Section 123(7) of the Representation of People Act, 1951 (hereinafter referred to as the 'Act'); secondly, for commission of corrupt practice of booth capturing by the agents of the returned candidate and by other persons as defined by Section 123(8) of the Act, while the other averments of commission of corrupt practices were given up as not being pressed. In his statement he claims himself to be declared elected.

5. So far as giving of further particulars or facts with respect to the commission of corrupt practices is concerned, it was stated that nothing more can be given as, it would hamper his right to read evidence, apart from it, nothing more can be stated or given in the circumstances of the case.

6. Learned counsel for the returned candidate argued that the Court could set aside the election only on the grounds given in Section 100 of the Act, i.e. commission of corrupt petition is to give enough notice to the returned candidate of any one person with the consent of the returned candidate or of his election agent. The object of filing the election petition is to give enough notice to the returned candidate of the definite charge which he is required to meet. No vague or conjectural allegations of facts can be substantiated for definite pleadings. The material facts disclosing commission of corrupt practices as defined in Section 123(7) of the Act, is a must. It was argued that the election petitioner must plead who has committed the corrupt practices of booth capturing. If it was not the returned candidate, then it must be pleaded at whose instance the same was captured. How it is attributable to the returned candidate. Material facts how it was captured have to be stated. The number of booth alleged to have been captured is another material fact, which must be disclosed before, the returned candidate can be charged with the commission of corrupt practice of booth capturing.

7. Learned counsel for the returned candidate vehemently submitted that the material facts constituting the consent of the returned candidate for booth capturing are totally absent in the petition. A direct nexus between the actual commission of corrupt practices and that of the returned candidate is required to be pleaded and proved before the election of the returned candidate can be set aside.

8. In order to support his submissions, learned counsel for the returned candidate relied on *Dhartipakar Madan Lal Agarwal v. Shri Rajiv Gandhi* AIR 1987 S.C. 1577 and *Azhar Hussain v. Rajiv Gandhi* AIR 1986 S.C. 1253. A further reference was made to *Daulat Ram Chauhan v. Anand Sharma* AIR 1984 S.C. 621 in order to contend that where two inferences are possible with regard to commission of corrupt practices, the plea cannot be tried as no roving and fishing enquiry is permissible.

9. Learned counsel for the returned candidate argued that the election petition does not disclose any corrupt practice as defined in Section 123(7) of the Act as it does not disclose material facts as to what is the assistance obtained, how and when obtained, as well as the purpose of obtaining the same. In order to support his submission, the learned counsel for the returned candidate relied on *Hardwari Lal v. Kanwal Singh* AIR 1972 S.C. 515.

10. Learned counsel for the petitioner refuted the submissions made by the learned counsel for the returned candidate. The petitioner himself made submissions in reply to the objections raised by the learned counsel for the returned candidate. Even the pleadings in the form of summing up of his submissions as well as some supplementary written submissions were filed by the petitioner. The main thrust of the contention of the petitioner made orally as well as in writing is to the effect that the material facts pleaded in the petition shows mass scale booth capturing. It was contended that keeping in view the scheme of the Act, Section 100 has to yield to Section 123. The averments made in the election petition read with the Annexures disclose the material facts with respect to the booth capturing by the agents of the returned candidate as well as by other persons. The p r to th

5(iv), 8 10(i), 13, 16 and Annexure P-5. Again a reference was made to a telegram sent by the petitioner to the effect that 80 per cent booths have already been captured by the armed goondas deployed by the Chief Minister, the Deputy Commissioner, relatives of the Chief Minister besides Superintendent of Police and the petitioner sought the suspension of election in Rohtak. There is no Annexure marked on the telegram. Still the petitioner submitted that as he put Annexure P-2 to his representation sent to the Election Commission and with which a copy of the aforesaid telegram has been attached, along with other enclosures, so this telegram being apart of the Annexure, be read as a part of the petition disclosing the material facts. This would show booth capturing by other persons. The petitioner made specific reference to paragraphs 8 and 9 as well as Annexure P-8 which is a copy of a news item published in the 'Indian Express' dated 26-11-1989.

11. The petitioner urged that free and fair elections are the life blood and indeed mainstream of representative democracy. The judiciary is under constitutional obligation in maintaining the democratic structure provided by the Constitution. It was argued that in the changed circumstances of communalisation and criminalisation of politics, incidents of booth capturing, attempts by unscrupulous elements actuated by their lust for power and means to capture power, by any means it has become necessary that judiciary should have a broader approach as it has in case of public interest litigation. It is argued that the Courts should approach the commission of corrupt practice of booth capturing totally differently than it has become established by the judicial precedents. It has been emphasised that in order to implement the intention of the Legislature, making booth capturing as a corrupt practice as well as an offence under the Act, the Courts should have a liberal approach. The standard of pleadings, method, and degree of proof, commission of corrupt practices should be judged from a different yard-stick than it has come to be established in case of allegations of other corrupt practices, particularly in view of the speeches made by various authorities like the Election Commission and in Parliament before amending the definition of corrupt practices by including booth capturing as one of the corrupt practices as defined in Section 123(8) of the Act. It is also the necessity, to have a different approach to this corrupt practice as it has acquired so many forms and techniques that approach to the pleadings as well as to the proof have to be kept flexible. The right of people to elect their own representatives in a free and fair election to govern themselves, has to be guarded. It was further submitted that the election petition should not be thrown out on technicalities. All the averments should be taken together to constitute something actionable. The rule of commonsense and substance should be kept in view rather than the words used.

12. On one of the dates of hearing, learned counsel for the petitioner while arguing the Miscellaneous Application for striking out the scandalous pleadings referred to the following judgements, namely, *K. Karanraja Nadar v. Kunju Thevar and others*, AIR 1958 S. C. 687; *Hardwari Lal v. Kanwal Singh*, AIR 1972 S.C. 515; *Udhav Singh v. Madhav Rao Scindia* AIR 1976 S.C. 744; *Arun Kumar Bose v. Mohd. Furkan Ansari and others* AIR 1983 S.C. 1311. *Daulat Ram Chauhan v. Anand Sharma* AIR 1984 S.C. 621, *Azhar Hussain v. Rajiv Gandhi* AIR 1986 S.C. 1253, *Dhartipakar Madan Lal Agarwal v. Shri Rajiv Gandhi* AIR 1987 S.C. 1577 *Analgamated Commercial Traders Pvt. Ltd., v. C. Hariprasad* AIR 1966 Madras 161; *Satya Narain v. Dhaja Ram and others* AIR 1973 Punjab & Haryana 431; *Ram Singh v. Kazi Mohiuddin and others* AIR 1988 Allahabad 210 and *J. B. Patnaik v. Bennett Coleman & Co. Ltd. and others* AIR 1990 Orissa 107.

13. It is beyond doubt that free and fair elections are the central pillars of the democracy. Democracy is the process adopted by the people to govern themselves. Holding of elections to choose their representatives to govern themselves is a mechanism to secure that end of governing themselves through their elected representatives. The object of the provision for election petitions is to keep the fountain of democratic policy above board and devoid of impurity. Courts are bound to see that the election reflects the true will of people. No corrupt practice, as envisaged by the

candidate has not been elected by exercising fraud, deception or compulsion on the voters. The people freely exercised their right on the polls. The secrecy was ensured by the authorities and the people were allowed to exercise their right of franchise in accordance with law.

14. The machinery, the process and the method of election have been provided by the Act. It further provides the remedy for enforcing electoral rights and settling the election disputes. The Act is a complete Code in itself. It has become a maxim in election jurisprudence, that right to be elected is neither a common law right nor a fundamental right. It is purely a statutory right and is regulated by the Statute. There is no right to dispute an election beyond the statutory provisions, howsoever immoral otherwise it may be. The election petition is neither an action at law nor a suit in equity but a statutory proceeding unknown to common law. The Courts do not possess any common law power.

15. The election of the returned candidate can only be set aside on the grounds stated by Section 100 of the Act and on no other grounds. It is not disputed that one of the grounds for setting aside the election and declaring it void under Section 100 of the Act is the commission of one or any of the corrupt practices committed by the returned candidate with which we are concerned in the instant election petition. Corrupt practices have been defined and itemised by Section 123 of the Act. Commission of corrupt practices by a candidate renders him liable for disqualification. It debars one from seeking election for a particular period in future.

16. Keeping in view the scheme of the Act, it is plain that election of the returned candidate can be challenged by presenting an election petition. Section 83 and Section 87 of the Act, read with the provisions of the Code of Civil Procedure as well as the Rules framed under the Representation of the People Act, 1951, by the High Court have made it incumbent on the election in an election petition to arrange as far as possible a concise statement of the material facts in a chronological order; give the particulars of the corrupt practices including as full a statement as possible of the names of the parties alleged to have committed such corrupt practices; the date of the commission of corrupt practices and the place of commission of each corrupt practice. Each corrupt practice is required to be pleaded separately, specifically and as far as possible should be contained in one or more paragraphs.

17. It has been observed by the Courts on numerous occasions and in election petitions particularly that the object of the pleadings is to bring to the forefront the material facts which resulted in violation of law, effecting the rights of the petitioner and giving him a right to enforce the same through Courts. It is to facilitate a fair trial. It is for giving a fair opportunity to the respondent to defend himself against the charges attributed to him.

18. There is no doubt that one of the considerations to be kept in view is to maintain the purity of election and track the corrupt practices. But at the same time it has to be kept in view that the Courts cannot be permitted to be converted into gamble houses to have a frail chance of defeating the will of the people. The election cannot be set aside on general, vague averments or on the grounds other than the one enumerated by Section 100 of the Act. The person challenging the election cannot be permitted to have a roving and fishing enquiry in the election petition as it is not an ordinary lis between the two parties. It is the litigation in which public has a deep interest.

19. By reading the statutory provisions of Section 83 as well as from the dictum of various authorities, it is well established that the election petition is bound to state in a logical form, the material facts constituting the grounds of challenge with certainty, preciseness and brevity. The material facts should be sufficient to apprise the returned candidate, whose election is under challenge of the cause

against him, or the grounds on which his election is sought to be declared void. It would not be sufficient to aver generally the violation of the Act or of commission of corrupt practices or to aver merely the conclusion, or merely reproducing the statutory provisions of the Act. The petitioner is bound to disclose the material facts falling within the descriptive terms of the corrupt practices as alleged to have been stated in the petition before the petitioner is allowed to prove them or the returned candidate can be indicated. The petitioner must show the right or the statutory provisions and their violation in the manner prohibited by the statute. The mere reproduction of the legal result and the inference would be nugatory to the law of pleadings. The reproduction of statutory provisions would result in negating the efficacy of material facts. The procedure need not be sacrificed at the altar of conciseness. The material facts should not be mixed up so as to leave the other party, who is required to meet them to guess the facts nor the election petitioner can be allowed to bridge the gaps in the material facts as the case proceeds.

20. It is only the material facts alone which are required to be pleaded. No evidence or law need be pleaded. Epithets should be shunned. The material facts have to be pleaded in an intelligible form so that one may not be embarrassed in meeting the same. The returned candidate must know what he has to meet definitely and with certainty. It cannot be left to deduction by arguments and inferences from recitals. The election petitioner must plead every and all essential facts, for the cause of action, under the statute. Though there cannot be any ritualistic formula for the pleadings of the election petition, the material facts should be germane to the statute giving cause of action or right to a person to conduct himself in the manner required by the Act. Material facts are the backbone and life line of the petition. Giving of material facts has to be complied with in letter and spirit. They cannot be left in vague form, as it would amount to throwing a wide net to see if anything can be caught.

21. Precedently, as understood, the material facts in each case stand on their own. These are the facts which, if taken to have been established, give the election petitioner the relief asked for. One of the tests propounded with respect to material facts is, whether Courts could give a direct verdict in favour of the election petitioner on the basis of the facts and the pleadings, in case the returned candidate had not appeared to oppose the same. The material facts are the necessary facts for the purpose of formulating a complete cause of action. Absence of a single material fact would result in non-triability of such a charge. Reference may be made to *Ram Sewak Yadav v. Hussain Kamil Kidwai & others*, AIR 1964 S.C. 1249. The material facts are the time-qua-non form election petition. The words of the statute cannot be substituted for material facts. What are the material facts depends on the nature of the charge levelled, the ground relied upon and the circumstances of each case.

22. So far as the material particulars, required to be given in case of corrupt practices in terms of Section 83 of the Act are concerned the same are so mixed with material facts that it is difficult to separate the two. The object of the material particulars is to give a complete and definite picture of the acts attributed to the returned candidate. They are meant to meet fairness to the returned candidate and to fulfil the picture of cause of action with reasonable and sufficient details. They are meant to explicitly state particular, specific, definite charge and to avoid attribution of a floating charge against the returned candidate.

23. Before proceeding further, it would be expedient to notice that Section 83 of the Act providing for the contents of the petition envisages that (i) that the petition shall contain a concise statement of material facts (ii) shall set forth full particulars of the corrupt practices (iii) the names of the parties alleged to have committed the corrupt practices (iv) the date and place of commission of corrupt practices. It further enjoins that an election petition shall

be verified in accordance with the Code of Civil Procedure as well as the same shall be supported by an affidavit in the prescribed form where corrupt practices have been averred. It further enjoins that any schedule or annexure of the petition shall also be verified in the same manner as the petition itself.

24. I have heard the learned counsel for the parties at length and have gone through the election petition.

25. The Hon'ble Supreme Court has provided guidelines and broad parameters for constituting and reading the pleadings. They have been elucidely pointed out in Uday Singh's case (supra). The observations of the Hon'ble Supreme Court runs as follows :—

"We are afraid, this ingenious method of construction after compartmentalisation, dissection, segregation and inversion of the language of the paragraph, suggested by Counsel, runs counter to the cardinal canon of interpretation, according to which, a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context, in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be constructed as it stands without addition or subtraction of words, or change of its apparent grammatical sense. The intention of the party concerned is to be gathered, primarily, from the tenor and terms of his pleading taken as a whole".

26. At this stage, I am constrained to observe that reading of the election petition brings out a total lack of system. There are incoherent and incomplete averments. The majority of corrupt practices attributed to the returned candidate are bereft of material facts. It appears that the election petition is mostly constituted of erratic inferences from the undisclosed facts. Rather, infact, inferences by the Election petitioner have been substituted for material facts disclosing a cause of action. It is virtually impossible to collate material facts as well as the particulars constituting the corrupt practices, which the election petitioner intends to attribute to the returned candidate or his election agent or any person or supporter with his or his election agent's consent. Since the petitioner has confined his challenge to the election of the returned candidate with respect to commission of corrupt practices as defined by Section 123(7) and 123(8) of the Act, it would be expedient at this stage to notice the definition of commission of corrupt practices as envisaged by Section 123(7) of the Act, which runs as under :—

"123. Corrupt practice :—The following shall be deemed to be corrupt practices for the purpose of this Act :—

- |     |    |    |
|-----|----|----|
| (1) | xx | xx |
| (2) | xx | xx |
| (3) | xx | xx |
| (4) | xx | xx |
| (5) | xx | xx |
| (6) | xx | xx |

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any person (with the consent of a candidate or his election agent) any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election from any person in the service of the Government and belonging to any of the following classes, namely :—

- |     |                                |
|-----|--------------------------------|
| (a) | Gazetted Officer ;             |
| (b) | xx      xx                     |
| (c) | xx      xx                     |
| (d) | members of the police forces ; |
| (e) | xx      xx                     |

(f)      xx      xx

(g)      xx      xx

[Provided that where any person in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty make any arrangements or provide any facilities or does any other act or thing, for, to, or in relation to any candidate or his agent or any other person, acting with the consent of the candidate or his election agent (where by reason of the office held by the candidate or for any other reason), such arrangements facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.]

27. This section states numerous circumstances that bring it into operation and they are :—(1) Obtaining any assistance for furtherance of the prospects of the candidate's election from any person in the service of Government (ii) for the furtherance of prospects of candidate's election; (iii) from any person in the service of the Government being a Gazetted Officer and (iv) from members of the police force. It has been specifically provided that any act done in discharge of official duty if the Officer provides :—

- (1) any arrangements ;
- (2) any facility ;
- (3) does any other act ;
- (4) or thing ;
- (5) for ;

(6) to; and (7) in relation to any candidate or his agent or other person acting with the consent of candidate or his election agent, it would not be deemed to be an assistance for furtherance of the prospects of the election of such candidate.

28. The other provisions of section 123(7) are not being noticed as the petitioner vide his statement dated January 12, 1991 has confined his challenge; to the election of the returned candidate with respect to (i) obtaining assistance by the returned candidate from the Deputy Commissioner for furtherance of prospects of his election (ii) from the police force.

29. Both the learned counsel for the parties relied on Hardwari Lal v. Kanwal Singh, AIR 1972 S.C. 515 in order to buttress their respective contentions. It would be necessary to cite the dictum of law laid down in this case, to the effect, that Section 123(7) of the Act defines various allegations of corrupt practices of obtaining, abetting, attempting to obtain, and procuring assistance for furtherance of the prospects of the candidate's election, from the Government Gazetted Officer or the members of the police force, other than giving of votes. It has been prohibited by law, that obtaining of assistance of any nature, for furtherance of prospects of election except giving of his vote, is forbidden. It has specifically observed that what assistance was obtained is a material fact, the type of assistance, manner of it and the persons from whom the same was sought are all material facts. They are required to be stated with exactitude and precision. How and in what manner the assistance was sought for furtherance of prospects of election of the returned candidate is another material fact required to be stated. The time and place of obtaining the assistance has been defined as material particulars. It was observed that fact is not a mere word. Various facts, events constitute the material facts. It was further observed that mode of assistance and measure and nature of assistance etc. are material facts to clothe the petition with a cause of action. The petitioner is required to state the fact in itself and the happening of it.

30. The petition is constituted of jumble of various allegations. By reading the election petition as well as the replication, the relevant facts material for consideration as to whether they fall within the ambit of Section 123(7) are, that the petitioner, under the scheme of the petition, started

by giving antecedents of the returned candidate and painted him as a person of criminal background and projected himself as a pious person. Succinctly, the facts much less the material facts that emerge from reading of the election petition and even taking care of the replication are that the returned candidate had posted his relatives as well as the relative of his son-in-law as the Deputy Commissioner, Rohtak in 1987 in anticipation of the elections to be held. The Deputy Commissioner was the Returning Officer at the elections notified to be held in 1989. The returned candidate had in mind, to be a candidate for the Parliamentary seat in Rohtak. One P. K. Choudhary was posted as a Tehsildar Rohtak, by the returned candidate. The election agent of the returned candidate stayed with the Deputy Commissioner. He is stated to be a relative of the Deputy Commissioner i.e. the Returning Officer as well as of returned candidate. The election agent and the Returning Officer planned and conducted the election campaign of the returned candidate. The Returning Officer appointed and changed from time to time the Presiding Officers and Counting Officers and other election staff who were willing to further the prospects of election of the returned candidate. The Returning Officer appointed paliable Presiding Officers who helped the Green Brigade to capture booths. The change in appointments of the Presiding Officers was never notified to the election petitioner by the Returning Officer, in spite of protests by him. The Returning Officer rigged the poll for the benefit of the returned candidate. There was a doubt with respect to fair and free election. The Returning Officer and the Superintendent of Police led Devi Lal's Green Brigade to facilitate booth capturing. At village Matanhel in Salaha constituency, the Returning Officer and the Superintendent of Police asked the voters to vote for the returned candidate against which protests were lodged by one Raghbir Singh Advocate. The Returning Officer to cover vandalism, at the polls, planned to eliminate the chances of countermand. He secured reports of the Presiding Officers with respect to 14 booths and sent the same with the recommendation of repoll. Repoll had been refused to the disadvantage of the election petitioner.

31. Apart from the facts as stated above, the petitioner referred to paragraph 5 and paragraph 11 of the election petition as well as para 6 of the replication. It may be noticed that the election petitioner after stating the generalities described the attitude of the Election Commissioner towards his complaints, which he referred in the course of arguments, runs as under :

"Shri Lathar came to Rohtak. Through out the election campaign, he stayed with his relative Ch. Balbir Singh Malik, the Returning Officer and Deputy Commissioner of Rohtak to plan and conduct Ch. Devi Lal's election campaign.

If any candidate in any election had ever obtained the (prohibited) assistance of a Government servant of a prohibited category, Ch. Devi Lal took assistance of the Returning Officer and D. C. Rohtak for the furtherance of his election protest and that as indicated above, in a planned manner".

32. It was stated in the election petition that about 400 Presiding Officers and Polling Officers were appointed for the election and when their appointments came to the notice of Ch. Devi Lal, he asked the Returning Officer to change them and appoint only those persons who would further his election prospects. The Returning Officer immediately changed the list. The election petitioner made complaints to the authorities in this regard.

33. Paragraph 11 of the election petition reproduced in verbatim, runs as under :—

"That respondent No. 7 has been declared elected with an impressive margin. But actually inspite of the help he had been getting from the district administration and the Chief Election Commissioner, he was down by more than one lac votes right upto November 19, 1989. The election (poll) was, however, hugely affected to the grave disadvantage of the petitioner by the numerous factors operating

since June/July, 1987 and especially during the election campaign and even more especially on the polling days i.e. on the 22nd and 25th November, and on the 28th November, 1989, when the counting was done in the absence of the petitioner and his agents".

In continuity of the above paragraph, in sub-para (i) only a passing reference has been made that respondent No. 7 had totally bent the administration of the State to his will after taking over as Chief Minister on 19-6-1987 through means wholly unacceptable.

Shri Mahender Singh Lather was his legal election agent. In actual fact Ch. Malik worked as the election agent of respondent No. 7, Ch. Devi Lal and manager of his poll campaign, not only by appointing reliable polling staff and helping the green brigade to capture booths but also by manipulating the repoll of limited number of booths. The Returning Officer hatched a plan to obviate the possibility of the entire poll being countermanded for which the petitioner was agitating. He secured reports from the booth numbers stated therein.

(34) Lastly, it was stated in the election petition as under :—

"The Green Brigade largely consisted of trained police personnel drawn from Madhuban under Ch. Devi Lal's Order. Even the stenguns and other firearms displayed by the Green Brigade belonged to the Armoury at Madhuban. To sum up, it was stated that he would have secured majority of votes if the result had not been affected by :—

- (a) Respondent No. 7 and planned misuse of the administrative machinery ;
- (b) manipulation of the election at various stages by the Returning Officer a relative of respondent No. 7; and
- (c) employment by respondent No. 7 of his notorious Green Brigade on the poll day apart from Chief Election Commissioner's indirect support to respondent No. 7."

(35) I fail to comprehend how from the facts or events disclosed, as summarised or reproduced above in verbatim, commission of corrupt practices as envisaged by Section 123(7) has been made out. The facts much less the material facts as emerged and stated above on scanning the election petition and pointed out by the petitioner do not fall within the ambit of Section 123(7) of the Act. There is no specific averment that the returned candidate has ever obtained any assistance from the Deputy Commissioner or the police force after the constituency had been called to elect a member to the Parliament for the furtherance of election prospects of the returned candidate. Even reading the petition disjointedly and culling out the sentences here and there, totally out of context, and ignoring the principle that pleading by inferences is not permissible particularly in an election petition, as it is a statutory requirement of the Act that every corrupt practice must be clearly and specifically stated, no commission of any corrupt practice falling within the purview of Section 123(7) could be spelled out.

(36) Reading the election petition in pith and substance, I do not find even remotely the intention of the election petitioner to state the material facts for commission of corrupt practices as envisaged by Section 123(7) of the Act. By any import, the allegations do not meet any one of the ingredients required to be stated to attribute the commission of corrupt practice of obtaining assistance from the Deputy Commissioner or the police force. There is no act, much less overt act attributed to the returned candidate or his election agent or any other person with the consent of either of them for obtaining the assistance of Deputy Commissioner/Returning Officer or the police force. There is no material fact stated in the election petition, much less spelling out the assistance.

It is not possible even to infer as to what assistance was sought and in what manner the same was obtained. On dwelling the pleadings further, the type of assistance, the manner of it, the time and date of it, the persons from whom sought, are conspicuously absent in the entire election petition. In my considered view, these are the material facts without which the returned candidate cannot be charged with commission of the corrupt practice. The haphazard manner of averring the sentence here or there, the disjointed facts in the form of one sentence here and one sentence there cannot make out a charge of corrupt practice against the returned candidate. The thrust of the averments of the election petitioner appears to be towards booth capturing.

(37) There is nothing in the pleadings to show the facts with respect to the manner of assistance, mode of assistance and measure of assistance. There is also no plea from which it can be reasonably inferred who enlisted the assistance, one is left to speculate and guess which of the corrupt practices, whether one or more have been committed. Assuming that the Deputy Commissioner was posted with an eye on the elections to parliament to be held on some future date, in the year 1987, no law has been pointed out under which a notice of such acts, having been committed prior to the notification of the elections, could be taken note of and the election can be set aside on that score. Nothing has been pleaded in what manner the assistance was sought, and how it was for furtherance of election prospects of the returned candidate. Even assuming the facts as stated above, that polling officers were changed at the instance of the returned candidate, that would not be itself further the prospects of election of the returned candidate.

Thus, I find that the petitioner has failed to make allegations of material facts in his pleadings, which if approved would establish that the returned candidate has obtained the assistance of the Deputy Commissioner and the police force for furtherance of his election prospects. It may be noticed that howsoever reprehensible or improper the acts may be, the returned candidate cannot be charged with the commission of any corrupt practice when the facts constituting it are pleaded, which is required to be averred categorically and proved beyond all reasonable doubt.

(38) At this stage, it would be expedient to notice the amended provisions of the Representation of the People Act, which runs as under :—

“(8) Booth capturing by a candidate or his agent or other person.

Explanation.—(1) In this section the expression “agent” includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(4) For the purposes of clause (8), ‘booth capturing’ shall have the same meaning as in section 135A.”

Section 135-A runs as under :—

“Booth capturing” includes, among other things, all or any of the following activities, namely :—

- (a) seizure of a polling station or a place fixed for the poll by any person or persons making polling authorities surrender the ballot papers or voting machines and doing of any other act which affects the orderly conduct of elections ;
- (b) taking possession of a polling station or a place fixed for the poll by any person or persons and allowing only his or their own supporters to exercise their right to vote and prevent others from voting ;
- (c) threatening any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote ;

(d) seizure of a place for counting of votes by any person or persons, making the counting authorities surrender the ballot papers or voting machines and the doing of anything which affects the orderly counting of votes ;

(e) doing by any person in the service of Government of all or any of the aforesaid activities or aiding or conniving at, any such activity in the furtherance of the prospects of the election of a candidate.”

Section 100(b) reads as under :—

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent, or

XX XX XX XX.”

(39) The Legislature being conscientious and keeping in view the wide range and multifacets of acts of booth capturing, particularly taking note of the infinite ingenuity of human nature to evolve novice methods of booth capturing and rigging the elections, and further taking note of different forms of booth capturing not capable of either complete comprehension, or definition of booth capturing, defined the commission of corrupt practice of booth capturing by adding Section 123(8) of the Act in wider terms in order to attain purity of election. Prior to this amendment, the Act did not contain any provisions to deal with the booth capturing. By the amendment, booth capturing has been made penal as well as a corrupt practice.

(40) Reading sections 100, 123(8) and 135(A) of the Act harmoniously and in its plainest forms, it emerges that the election of the returned candidate can be set aside if either he or his election agent, or his agent captures the booth. It further enumerates that the booth capturing by other persons though is defined as a corrupt practice, yet booth capturing by other persons has to be read in conjunction with Section 100 of the Representation of People Act. It provides commission of corrupt practice of booth capturing by any person, but it has to be either with the consent of the returned candidate or with the consent of his election agent.

(41) The Legislature in its wisdom provided the definition of an agent with respect to section 123(8) and gave it a deemed meaning. The Legislature gave the definition of an agent in very wide terms. It has been done so, to meet the ingenuity of human mind to violate the law. The definition of an agent provides inclusive of particular persons. It has given a deemed meaning to an agent to be read in the section. It has provided that agent apart from any other concept of agent the election agent, a polling agent or any person who acts or acted as an agent in connection with the election with the consent of the candidate. It is an inclusive definition i.e. including certain persons to be agent though ordinarily they may not be. The definition does not obliterate the meaning of agent as ordinarily understood.

(42) The Legislature similarly realising that booth capturing cannot be defined, no parameter which would amount to booth capturing were specified. Booth capturing has a wide spectrum of acts. The acts in peculiar circumstances in a given case may amount to booth capturing. The definition of booth capturing has been kept open conscientiously and wider by the Legislatures. It is provided that apart from the booth capturing as used in general terminology it would also include the acts stated as booth capturing. Deemed meaning has been given to particular facts amounting to booth capturing. Reference may be made to Section 135-A. It provides : (a) seizure of a polling station or a place fixed for the poll by any person (b) making polling authorities to surrender the ballot papers or voting machines and doing of any other act which affects the orderly conduct of elections by any person (c) taking possession of a polling station or a place fixed for the poll by any person or persons and allowing only his or their own supporters to exercise their right to vote and



prevent others from voting; (d) threatening any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote, are some of the facts which have been deemed to amount to booth capturing as envisaged by section 123(8) of the Act. Even aiding or conniving of any of above acts in furtherance of election prospects of a candidate have been included in the definition of booth capturing. The Legislature in its wisdom keeping in view the frailties of the human mind to comprehend various acts tampering with the free and fair election, amounting to be booth capturing, kept the definition open and wider. Certain facts in the peculiar facts and circumstances of a particular case may amount to booth capturing. The Legislature expressed the definition of booth capturing to the fullest and farthest in its repitor, which it could do.

(43) Keeping in view the principle noted in Udhay Singh's case (supra) to the effect that pleading has to be read as a whole to ascertain its true import, read it in substance while ignoring its form, the pleading should be considered as it stands without additions or subtraction of words or change of its apparent grammatical sense. The essence of an election petition can be taken by reading the same as a whole and as such, can be taken or gathered from the pleadings as a whole. The rule of pith and substance while reading the petition has to be observed in order to curb the commission of corrupt practice. It is the reading of the pleadings in substance, and ignoring the form which has to be looked into. The pleadings have to be construed as it stand without addition or subtraction of words or change its apparent grammatical sense.

(44) An election petition can not be read from the point of view of the election petitioner i.e. how he thought or intended, or what is his motive. It has to be read keeping in view what has been plainly, stated in the election petition. It has to be seen whether fact or events disclosed in the petition comply with the requirement as envisaged by the statute or Act. Conclusion, arrived at by the petitioner cannot be treated as pleadings of material facts. The returned candidate cannot be held vicariously liable for commission of corrupt practices of other persons. The requisites essential to disclose the corrupt practices cannot be inferred by culling out a sentence here and there or joining of the head of one averment with the tail of another. Material facts cannot be read by complex process of reasoning, deduction, inferences or arguments. Mere reproduction of the Section or making of omnibus statement of commission of corrupt practice does not amount to pleading of material facts. Pleadings by inferences of corrupt practices have not been envisaged by the Act.

(45) It would be expedient to collate the averments made with respect to booth capturing.

(46) By scanning the petition, the replication as well as the statement made in Court, the skeletal averments on facts emerge, that the returned candidate had bad antecedents and the petitioner has the entire good to his credit. While stating so, the petitioner made reference which can be reproduced in verbatim to the effect, "It was this Abhey Singh who led Ch Devi Lal Respondent No's Green Brigade". Thereafter, the petitioner pointed out by stating in the petition that the returned candidate out of political design in the year 1987 appointed Ch. Balbir Singh Malik, Jr. IAS Officer and close relation of Mahinder Singh Lather as Deputy Commissioner, Rohtak. Mahinder Singh Lather is none else but is the son-in-law of the brother of the returned candidate. Similarly, one P. K. Chaudhry who is again a close relation was appointed Tehsildar at Rohtak. The overt act attributed to the Returning Officer is to the effect, that under the directions of the returned candidate, he entitled the reliable persons willing to further the prospects of election of the returned candidate, on election duty. The Green Brigade was led by S. P. and Deputy Commissioner to facilitate the booth capturing. They entered into the polling booth and asked the voters to vote for the returned candidate. The petitioner found broken ballot boxes and mutilated ballot papers. All acts are attributed to the Green Brigade who are alleged to have snatch-

ed the ballot papers and the ballot boxes from the Presiding Officers. The petitioner saw Abhey Singh coming out of the polling booth. Gandhi Nagar Booth was ransacked by Abhey Singh's Green Brigade and the fact has not been mentioned in the diaries of the Presiding Officer. The Green Brigade was alleged to be of police officers drawn from Madhuban under the orders of the returned candidate. The weapons displayed on the polling booths by the Green Brigade belonged to the Police Armoury, Madhuban. While counting narration of the facts, the petitioner stated that details with respect to booth capturing is given in the report of a Committee known as Independent Initiative Committee, alleged to be an Organisation of eminent citizens published in the newspapers. The votes of the staff of the University and Medical Colleges were cast by Dr. J. P. Singh's men who is the poretege of the returned candidate. At the most, the substantive way in which the matter has been put before me can be summed up is that there was a Green Brigade known as Ch. Devi Lal's Green Brigade. At the cost of repetition it may be observed that the petitioner stated in the election petition that the said Green Brigade at some point of time was led by Abhey Singh and on other point of time by the Returning Officer or the Supdt. of Police.

(46) Great emphasis was laid by the petitioner under the head of 'booth capturing' on the averments made in paragraph 10 of the Election Petition which may be stated in extenso :

"That the countryside presented the same picture as the town of Rohtak in the matter of booth capturing, rigging of the election, intimidation of voters and polling staff would become obvious from the following few cases, not noticed by the team of the Independent Initiative :

- (i) At village Rayla (Jhajjar segment of the constituency was intimidated into receiving votes cast by non voters. His note, a copy of which is added along with the letter to the Chief Election Commissioner dated 25-11-1989 is added here as Annexure P-5, is most significant.
- (ii) At petitioner's own native village (Chhara) a village which has always (since 1962) backed the petitioner to the tilt—the Green Brigade made its appearance. The villagers were annoyed but were helpless in the face of armed men, some of whom got into the booth located in the Girls High School of the village and some stayed outside. Those who had got in passed out ballot papers and the seal through the window to their comrades outside who marked.
- (iii) Cases of forcible booth capturing in the countryside were reported to the petitioner by Shri Ishwar Singh Sharma, incharge of Badli segment, Ch. Jeeit Singh, Advocate Incharge of Jhajjar segment, Ch. Om Parkash Beri, ex-MLA, helping the petitioner in Beri segment, Sh. Subhash Batra, President Dist. Cong. (I) Rohtak (Urban) working in Rohtak segment Smt. Kartar Devi, ex-MLA/Minister, working in Kalanaur segment, Ch. Chander Bhan Incharge of Hassanpur segment and by numerous other workers of the petitioner."

(47) The petitioner continued in averring in general terms irrelevant and scandalous averments to the effect that total town protested against the strong armed method adopted by the returned candidate which resulted in polling of a few votes on account of terror and capturing polling booth with the help of the Green Brigade. It was averred particularly in Paragraph 15 that 600 booths were captured. Further a table of a number of booths captured have been mentioned in Para 15 with the name of segment and number of votes involved. It was specifically stated that the Deputy Commissioner and S.P. led the Green Brigade and told the voters in the polling booth to poll for the returned candidate. Gandhi Nagar Booth was ransacked by Abhey



Singh's Green Brigade. The Deputy Commissioner and the Returning Officer helped the Green Brigade to capture the booth and they manipulated the repoll of a limited number of booths. The Returning Officer secured the reports from the Presiding Officer with respect to limited number of booths only. It was averred that the votes were polled by impersonation with the help of Green Brigade and polling staff, and that a letter was addressed to the Authorities by the petitioner apprehending booth capturing at the hands of the Green Brigade, but much worse had happened than what was apprehended. The list of the affected booths is alleged to have been given by the Legal Advisor to the Election Commission. High percentage of 80 per cent polling was achieved by supporters of the returned candidate with the help of the Green Brigade. Votes were marked by the members themselves of the Green Brigade. Finally concluding his averments the petitioner stated in Paragraph 18 as under :—

"That to sum up it is beyond dispute that the petitioner would have secured majority votes in the election, if the result had not been affected by :

- (a) respondent No. 7's planned misuse of the administrative machinery;
- (b) manipulation of the election at various stages by the Returning Officer, a relative of Respondent No. 7;

"(c) employment by Respondent No. 7 of his notorious Green Brigade on the poll day; and

- (d) the Chief Election Commissioner's indirect support to Respondent No. 7, in that the former took no notice of the Petitioner's insistent demand for a free and fair election and his refusal to order repoll in the entire constituency, even though he was fully familiar with Ch. Devi Lal's use of strong-arm methods for winning elections, from what he (the Chief Election Commissioner) had seen in Faridabad's Parliamentary bye-election which had taken place only a short while ago."

(48) It is pertinent to note that the petition is a veritable rignarole. Apart from the facts, as summarised above, it may be noticed that in paragraph 8 of the petition, the petitioner disclosed the story of exercise of undue influence and made an attempt to connect the assumed act of attributing booth capturing to undue influence. It would be advantageous to reproduce how the averments started in paragraph-8. It runs as under :—

"The story of the exercise of undue influence by Ch. Devi Lal's Green Brigade and by his election agent does not end with the happenings in Rohtak town. There was hardly a booth in the constituency which was left uncaptured".

It further goes on to say that "in the report prepared and circulated by the Independent Initiative, which is a social body, who made a report with respect to the connection of Ch. Devi Lal's election agent with the exercise of undue influence, the intimidation of voters; his interferences with the electoral rights of the Harijans and appeal in the name of caste etc."

(49) In the same strain, the election petitioner made a passing reference with respect to use of strong armed methods employed by Ch. Devi Lal's Green Brigade with the blatant help of the Deputy Commissioner and the Superintendent of Police.

(50) The allegations were refuted in the written statement.

(51) The petitioner in his replication stated that booth capturing was so numerous that it is difficult to give details here, but they will be revealed at the time of evidence. It is all a matter of record and there can never be a question of an after thought in such cases. Voting pattern, percentage of votes reduced the election to total farce. The

obvious advantage of all acts and conduct of the Green Brigade was attributed to Ch. Devi Lal, the returned candidate. Again Green-Brigade was stated to be a National scandal and is capable of committing any crime.

(52) The averments have been summarised above after marshalling the pleadings, culling out one fact from one para and the averments from other, though the said sentences have been made in the peculiar context of the averments being made in the paragraph.

53. The petitioner vide his statement dated January 12, 1991, confind his chartered of claim to commission of corrupt practice of booth capturing by the returned candidate's agent and by other persons as defined by section 123(8) of the Act. In order to determine whether material facts as well as material particulars under the heading of 'booth capturing' by the returned candidate's agent or by other persons have been made out.

54. The entire emphasis and thrust of the arguments of the petitioner were to the effect that booths were captured by the Green Brigade some times led by Abhey Singh and at other point of time by the Deputy Commissioner and the S.P. That is the bald statement made in the entire election petition. It may be noticed that no name of the perpetrators of booth capturing has been disclosed either in the election petition or in the replication or otherwise.

55. Precedently, it has been established that consent to do a particular act is a material fact. The facts constituting the consent have to be pleaded as facts and proved as such. The inference from those facts with respect to the consent is the purview of the Court. Similarly, booth capturing is again a fact. It is incumbent for petitioner to state the material facts constituting booth capturing. It is for Courts to infer from those facts whether it amounted to booth capturing falling within the ambit of the definition of booth capturing as provided by Section 123(8) of the Act.

56. In order to attribute agency to a particular person of his acting as an agent of the returned candidate, it is essential to plead the material facts and attributes of an agent before the petitioner can be permitted to prove a person to be an agent of the returned candidate. Though the words of the language of the Section are perfectly wide and general and not restricted, yet material facts are required to be pleaded to disclose what acts culminated in an event, which were committed by the returned candidate, in order to constitute booth capturing or constituting a person as an agent. Similarly, pleading of material facts constituting consent to any other person are the pre-requisites of corrupt practice by any other person with the consent of either the returned candidate or his election agent before the petitioner could be charged with commission of corrupt practice. To prove the charge of commission of corrupt practice of booth capturing, I am constrained to observe that, precise sequence of events, unerringly imputing charge of booth capturing by the returned candidate is echoed. The plea cannot be left in the lopsided realm of facts. These material facts are the pillars and essential to disclose in the election petition before the returned candidate is indicted of commission of corrupt practice. The bare using of epithets like booth capturing agent, rigging of election so on and so forth, does not disclose the material facts. Mere reproduction of the language of the Section even re-arranged, does not amount to a plea of a fact falling within the ambit of the Section otherwise it would lose the very efficacy of pleadings. The Courts are bound to and must look at the facts stated and the law violated and taking note of the alleged averments in a commonsense way, and ask whether the facts disclosed are substantial and falls within the parameters of the ambit of law. In my considered view, the approach to find out the material facts in the election petition is to look back over the series of events disclosed, constituting the commission of corrupt practices. The Court must ask a question to themselves whether in the circumstances, the Election Petition discloses any cause of action. One must avoid mechanical solution or any ritualistic formula, to find out whether the required facts disclosed complied with, before the petition can be sent for trial. The law particularly Section 83 of the Act enjoins

on the petitioner in no clear terms that the petitioner should disclose precisely the material facts answering all concomitants constituting the commission of corrupt practice. Further it is required that full particulars disclosing the corrupt practice i.e. time, place and date, booth capturing is an independent ground for commission of corrupt practice. The petitioner has miserably failed to spell out and formulate his plea in order to disclose the material facts from which it could be inferred that booths were captured as defined by the Act. The plea has to be accurately and comprehensively stated in order to provide a fair opportunity to the respondent and elected candidate to meet the charge levelled against him. The pleadings cannot be lightly treated and as suggested by the petitioner, it cannot precisely be compared with public interest litigation wherein question of justice is of prime importance whereas in the election law as settled precedents and stated above equity does not come in. These are the statutory proceedings and can be carried in letter and spirit of the provisions of the statute.

57. Sitting of the entire election petition, facts disclosed or events narrated, the petitioner made reference to one report or the other, either in the newspapers or independent initiative or reports of the petitioner made and erratical inference of booth capturing. This made allegation of commission of corrupt practice as defined by Section 123(8), for setting aside the election. I am constrained to say that this is not permissible in election law. By incidents or events narrated, keeping in view the scheme, in which the petition is drafted. Neither in substance nor literally nor in sequels of it discloses no material facts resulting in the booth capturing, satisfying all the commitments required by Section 123(8) have been pleaded. A sweeping and omnibus averment in the form of a sentence here and there totally out of context while narrating an event, with an epithet of booth capturing, has been made. There is no doubt that the story told as summarised above, the petitioner's pleadings is reprehensible. Story pleaded almost in the nature of fiction declares the gagging the democratic process. The question before us is whether the story culled out by mixing of the entire petition discloses any material facts, within the ambit of the corrupt practice of booth capturing as defined by the Act. Howsoever, lucidly with epithets the re-arranged words of the section are reproduced, cannot be a substitute for material facts. In my considered view, the attempt of the petitioner appears to be to plead the commission of corrupt practice of undue influence which he himself admitted that the petition does not disclose. It discloses that even if the corrupt practice exists, on the brief reference to the pleadings, yet the petitioner has not relied upon it. Sympathy or reprehensible nature of the Act does not envisage the setting aside of election. Odium of reading the petition, replication and even annexures is an search in vain. The attempt made by the petitioner in course of arguments to create facts which are missing from pleadings cannot be substituted by any other process of anatomy of petition or conclusion made by the petitioner.

58. It is not envisaged by the Act nor by the Code of Civil Procedure, to put forth the implied pleadings. It is not permissible to rewrite the pleadings. It is ordinary principle, that pleading of material facts cannot be by process of reasoning producing a particular logical result. Pleadings innuendo are not permissible. In the case in hand, it has neither been impliedly nor by inferences nor even innuendo pleaded that, the booths were captured either by the returned candidate or by his agent or by any other person much less with the consent of the returned candidate or his election agent. The petition is constituted of rigmare/le pleas. There are general, vague allegations and omnibus statement of booth capturing by the Green brigade Morsel averment in some paragraphs. I am constrained to observe that the petitioner has not stated any material facts with respect to Green Brigade. It has been stated at one place that, it constitutes of a goons let loose, by the returned candidate, on the other hand it was stated to be constituted of largely police constables from Madhuban. No striking or obvious feature with respect to Green Brigade has been stated, rather the petitioner has narrated his conclusion with respect to persons alleged to have captured booths and named collectively it as Green Brigade. The respondent is left in the arena of bewilderment to know what

charge he is required to meet. No roving and fishing enquiry can be permitted in an election petition. The petitioner cannot be permitted to produce convenient witness, procure and produce according to the exigencies and progress of the case.

59. The election cannot be challenged on morsel of information. On scanning the election petition, statement of the petitioner and replication, the relevant allegations may be stated in extenso in the words of election petition "booth captures were so numerous that it is difficult to give details here. They will be revealed at the time of evidence. It is all a matter of record and then there can never be a question of after-thought in such cases. Voting pattern and percentage of votes is totally reduced to the obvious advantage of Devi Lal. Green Brigade is a national scandal. They are capable of committing any crime." Even in the course of arguments, the petitioner specifically stated that "no further particulars or facts with respect to booth capturing or obtaining assistance can be given as it would hamper his right to lead evidence. Nothing beyond what has already been given, can be stated or given in the circumstances of the case, nature of case or the allegations made".

60. It is axiomatic that corrupt practice is to be proved like a criminal charge. It cannot be proved on the basis of inferences, one is required to aver in clear, specific allegations. There cannot be any substitute to material facts leading to an inference of consent. No implied consent can be pleaded nor implied consent has been made as corrupt practice under the Act. The contention of the petitioner that the election petition is to be treated as public interest litigation cannot be accepted on the face of it particularly in view of observations made earlier.

61. Reading the exordium to the petition, scanning the charge attempted to be attributed to returned candidate, marshalling the pleading, I am constrained to observe that the petitioner's attempt to charge the returned candidate with a corrupt practice of booth capturing in any form is not even a cascade of corrupt practice of booth capturing. Keeping in view the exordium of petition, body of it and inferences drawn or conclusions assumed by the petitioner does not even remotely put any nexus between commission of corrupt practice of booth capturing by the returned candidate. The attempt of the petitioner to make out corrupt practice by doing the anatomy of the election petition and uplifting a sentence here and reading of it in conjunction with another wherein a sentence was used to convey different events, cannot be permitted to discover commission of corrupt practice. It is pertinent to note that by complex reading and involved process of argumentation does not lead to an inference or conclusion of commission of corrupt practice. One is lost in the jumble of confused averments and unable to make head or tail of the other in order to present a composite picture of corrupt practice. The inevitable result is plea made in the sequence of events disclosed no corrupt practice. I have failed to find out, what to say of all the concomitants of corrupt practice, not even one can be fixed. Averments of booth capturing merely stating so, does not amount to pleading facts for the same.

62. In an election petition Court is to determine the truth of facts alleged and keep the election free of corrupt practice. Courts are bound to see that duly qualified persons have been elected. The voters have not been duped etc. It is for the petitioner to aver facts after due enquiries and prove them at trial. It is then alone the election can be set aside. There is no doubt that the Courts should be reluctant to frustrate the action on technical grounds particularly when commission of corrupt practice is alleged, as purity of election is the prime object of the act, yet the fact cannot be lost sight of that the petitioner cannot be granted an opportunity of gambling in Court taking a free chance of success and allow making of roving and fishing enquiry with no definite charge for which the returned candidate can be indicated.

63. The petitioner cannot cure the lacuna of withholding the material facts and information from the returned candidate. The petitioner appears to have been caught up in the false plea that he can get something for nothing. The petitioner cannot be permitted to trim his sails in petition according to his interest. The plea of booth capturing has

not been put forth in its true prospective from which it can be viewed as commission or corrupt practice within the ambit of the Act. The pleadings are extremely vague and lacking in material particulars also. It has been artistically drawn up. It is virtually a compendium of events in the nature of fiction rather disclosure of essential material facts. All sorts of irrelevant, vexatious, scandalous, unnecessary, frivolous pleas and facts have been stated so much so that the petitioner has not shunned in abusing the returned candidate when he averred in the Election Petition that Mahender Singh Lather the election agent of the petitioner is the virtual son-in-law of the returned candidate. The election petitioner is not new to pleading. He has innumerable cases to his credit which he conducted himself. He candidly stated that he conducted his own election petition upto Hon'ble Supreme Court. He can not claim to be naive and claim laxity in pleading of an election as being an illiterate person.

(64) There are no material facts disclosed in the entire Election Petition, how, when, where, which polling station or a place for poll was seized, or taken possession of or at which polling station, which authority, was made to surrender ballot papers, to whom when, at which booth, to which person the ballot papers were surrendered. What is the nexus between the persons to whom the assumed ballot papers were surrendered, and the returned candidate. No material facts, how the act of the persons can be attributed to the returned candidate even remotely has been stated. There is no averment or material facts constituted of doing an act which affected the orderly conduct of the election. There are no material facts or even remotest reference that by taking possession of the polling station, the supporters of a particular candidate were allowed to vote and the others were prevented. There is no averment that any elector was threatened and prevented from going to the polling station. There is no person named to be an agent of the returned candidate. Abhey Singh, Returning Officer, Mahender Singh Lather can be termed as agents, by inference satisfying the conditions imposed by the act, so that person can be deemed to be an agent of returned candidate, within the definition provided by the Act. No overt act of booth capturing has been attributed to the election agent or a polling agent or to any other person with the consent of the candidate. No averment has been made that though Abhey Singh is the grandson of the returned candidate, he was working in connection with the affairs of election of the returned candidate. No material facts disclosing the consent of the returned candidate for booth capturing to any other person has been disclosed. There is not an iota of plea from which inference of returned candidate can be inferred even remotely.

(65) The petitioner referred to the Annexures attached including the reports by the Independent Initiative Committee as well as newspapers and slips. A reading of the entire petition does not make out that the documents attached with the petition, though termed as Annexures, are the part of the pleadings. Even if they are taken as part of the pleadings, it does not make any improvement in the averments of the pleadings.

(66) The petitioner vehemently emphasized that commission of corrupt practice of booth capturing has been put forth candidly by the petition in paragraph 10 of the election petition, which has been reproduced in verbatim in the earlier part of the judgment. Dissecting the facts, in the para, the petitioner has pleaded that at village Rayia, the Presiding Officer was intimidated to allow to cast the votes of the voters by the non-voters. It nowhere discloses who were the perpetrators who intimidated the Polling Officer, nor it has been disclosed who was the polling officer. What and how he was intimidated has also not been stated. The averments are bereft of all the quittance defined for both capturing. Though a reference to Annexure P5 has been made yet it cannot be treated as part of the pleading, particularly when the facts have neither been averred in the election petition nor the Annexures have been verified or envisaged by Section 83 of the Act. The petitioner intended to make the Annexures as part of the pleadings. Annexure P5 is in the most generic. The petitioner has claimed repoll. Only averment made is that Ch. Devi Lal's Green Brigade with their supporters were

voting on behalf of those who were boycotting the votes. The Annexure makes further reference to some letter addressed by the petitioner to the Returning Officer, wherein he has specifically mentioned the happenings in the constituency. A reference to the Annexure discloses that at Rayia, Jhajar segment of Parliamentary constituency, Shri Jawan Singh and his family was manhandled by snatching their ballot papers Sr. Nos. 146400 to 146830 and marked them in favour of Janta Dal. I fail to comprehend how Annexure P5 or enclosure with it involves the returned candidate. Nothing has been attributed to the returned candidate in any form whatsoever. In view of such a vague plea, the petitioner cannot be indicted with the charge of corrupt practice.

(67) Similarly, in para 10(ii) it is stated that in village Chhara after stating, the village is being of petitioner and always backed the petitioner to the tilt, the villagers were annoyed by the presence of Green Brigade but were helpless because of the armed men, some of whom got into the booth located in the Girls High School of the village, and some stayed outside. The men who entered the booth passed out the ballot papers with seal to their comrades outside, who marked them. There is no averment not even the remotest indication that these votes were over polled. No person has been named who acted in the manner as stated above. Neither any time or date of happening has been stated. Without anything with respect to anything more to identify the Green Brigade, it is too much to attribute the act of the Green Brigade to the returned candidate. There are no material facts with respect to the Green Brigade or nexus between the Green Brigade and the returned candidate. No facts have been disclosed that the Green Brigade was acting with the consent of the returned candidate. The averments have been made on the basis of the reports made by the named persons. That is this what the petitioner stated at the best. No part has been attributed to the returned candidate. It is well established that acting with consent and acting in connivance or acting on one's instance are totally different concepts. Material fact for each one of the acts would be poll apart. Reference may be made to Giani Zail Singh's case (supra) AIR 1984 (1) S.C.C. 390. The petitioner vehemently argued that these averments in the petition disclose the cause of action of booth capturing either by the agent or by no other person with the consent of the returned candidate.

(68) Similar are my observations with respect to paragraph 5. The refusal of the petitioner in his statement as well as in the replica that no further facts or names of the informants and the names of the persons or agents who captured the booths can be disclosed, keeping the material facts up the sleeves makes the averments devoid of any material facts.

(69) The words of Section 123(8) of the Act are precisely wide, general and not restricted. No doubt, Legislature intended to cover all sorts of acts resulting in booth capturing, keeping in view the human ingenuity of polluting the election process in an attempt to obtain political power by all means. Even the acts carrying doubt about their being in the nature of booth capturing by the Act as booth capturing has been defined by deeming provisions. In my considered view, the acts averred and summarised above and referred to in verbatim do not even broadly fall within the definition of booth capturing attributable to the returned candidate. There is not a whisper in the entire election that even assumed acts committed by the alleged Green Brigade amounted to commission of corrupt practices by the returned candidate, inasmuch as there are no facts much less material facts, or in the particulars stated in the election petition, either with respect to the consent of the returned candidate to the Green Brigade for booth capturing or the Green Brigade being an agent of the returned candidate as defined by the Act. In spite of the fact that the definition of agent also has been kept very wide. In view of the facts lucidly summarised above, it is pertinent to note that there are no averments from which it can be inferred even remotely that the acts are attributable to the returned candidate. Though the petitioner emphasised and choose to attribute corrupt practices of booth capturing to the returned candidate but either on literal reading of facts as noticed in the earlier part of the judgment or later by disclosing any act of booth capturing attributable to the returned candidate, it appears and can be reasonably assumed that the petitioner intended to attribute corrupt practice of undue in-

fluence and while doing so here and there used the epithets of booth capturing. Thus, even if the corrupt practice exists, that has not been relied upon either in the petition or in the statement made later. However apprehensible and condemnable the happenings may be but unless the returned candidate is either himself the perpetrator of the act or it is attributable at him in any manner or is within his knowledge, his election cannot be set aside. The entire petition is a conglomeration of general averments and does not conform to any corrupt practice defined by Section 123 of the Act. Thus, in my considered view, the petition does not disclose commission of any corrupt practice as contemplated by Section 123 of the Act.

70. The claim of the petitioner for being declared elected cannot be sustained. The statutory requirement for declaring the petitioner elected named in Section 101 of the Act. Relevant portion of the Section is in the following terms:—

"If any person who has lodged a petition has in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion—

(a) XX XX XX

(b) That but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, the High Court shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected."

(71) The petitioner has averred in the petition that returned candidate is disqualified on account of commission of corrupt practice stated in the election petition. He further averred that the election petitioner would have been elected but for unworthy efforts of the Green Brigade, appealed to Jats and non-voters to vote for the returned candidate. In fact, the election petitioner would have secured majority of votes but for the clandestine misusing of the official machinery, deployment of Green Brigade and the support rendered by the Chief Election Commissioner to the returned candidate by not taking into consideration and acting on his complaints. By reading of the section, it is discernible that the petitioner could be declared elected if he would have received the majority of the valid votes but for the votes obtained by the returned candidate on account of commission of corrupt practices. The link has to be established between the votes received because of the commission of corrupt practices committed by the returned candidate. If after taking out the votes received because of the commission of corrupt practices by the returned candidate, the petitioner received the majority of valid votes then alone the petitioner can be declared elected. There is no such averment or material facts stated in the election petition.

72. There is no dispute that the returned candidate received the majority of the valid votes. There is no averment in the entire election petition that how many votes the returned candidate had received on account of the commission of corrupt practices and innuendo plea was taken to be established by referring to the averments in paragraph 19 of the election petition wherein it is stated that the scrutiny of election record and recounting of booth where re-poll was asked for by the election petitioner would have eminently justified the claim of the seat by the petitioner.

73. I am of the considered view, that neither any plea that the election petitioner had received majority of valid votes was raised nor material facts have been disclosed to show, that it was so intended particularly by referring to the averments made. Intention gathered from the scheme of the petition, reading the substance of the petition, no such plea can either be read expressly or impliedly that the petitioner has pleaded that he would have received majority of valid votes but for the votes received account

of corrupt practices committed by the returned candidate. No material facts have been disclosed that the votes received by the returned candidate are attributable to any or all of the corrupt practices alleged to have been committed much less by the returned candidate. There is not even a reference innuendo to the effect that the returned candidate did receive certain votes on account of commission of corrupt practices which he would have not received but for the corrupt practices attributable to the returned candidate much less its effect on the votes or their consequences on the election result so far as the returned candidate is concerned.

74. Thus, the material facts emerged from reading of paragraphs 4, 17, 18 and 19 of the election petition, are that the election petitioner is a pious person, the returned candidate is a criminal. It is on account of unworthy efforts of the Green Brigade, the Administration's cold shoulder to the objections and complaints and the appeal to Jats by the returned candidate that the election-petitioner failed in obtaining a resounding victory in the election. He would have secured majority of valid votes but for the clandestine misuser of administrative machinery, manipulation of election at various stages, deployment of the Green Brigade as well as the support by the Election Commissioner to the returned candidate by not taking into consideration the petitioner's complaints. The returned candidate had a caste approach as a Chief Minister and this alienated the non-Jat voters which are 30 percent. The election petitioner further attributed to the returned candidate and his family members the master minded criminology and used the power and money in order to make their way into politics. It is attributed that the election was perverted to the disadvantage of the election-petitioner since July, 1987. The election petitioner claimed that had there been peaceful and fair polls, the returned candidate would have lagged behind by 70 percent vote. It was further claimed by making a passing reference, that the election-petitioner would have won if the booths were not captured.

75. It would be impossible to discern or collate material facts, constituting the averments that the returned candidate had, either obtained votes by means of corrupt practices to such an extent that but for such votes received by the returned candidate attributable to the corrupt practices committed, he would have lost the election and the votes polled on account of commission of corrupt practices in his favour, would have been polled in favour of the election petitioner. No number of votes polled in favour of the returned candidate attributable to the corrupt practices has been stated. It has not been stated how many votes out of them would have been polled in favour of the election petitioner. No material facts affecting the votes of the returned candidate by corrupt practices attributed to him have been disclosed.

76. I am constrained to observe that by reading of the entire election petition, I am able only to spell out of the jumble of various averments, that the petitioner claims to be a pious and meritorious person and the returned candidate has been painted to be most undesirable person. The respondent is stated to have started his undesirable activities and implementing the same since July, 1987 much before the constituency was called to elect member to Parliament the returned candidate had decided to seek the election from the constituency.

77. The Act does not provide for setting aside the election for the events or acts prior to the declaration of holding election. The averments made in the election petition are general in nature, bereft of facts or material facts. It is impossible even to gather what the election petitioner actually intended to urge. It does not disclose what the petitioner was asserting. It would emerge from brief exordium, the petitioner's conclusions stated in para 18 of the election petition, that the petitioner challenged the election on the grounds made out in paragraph 18, i.e. there was an abuse and planned misuser of Government machinery, indifferent attitude of the Chief Election Commissioner, relation of the returned candidate and his election agent

with the Returning Officer, antecedents of the returned candidate, planning of the election campaign for the returned candidate, without disclosing what that planning was and what was its effect and how the planning was either prohibited by the Act or was in violation of any of the provisions of the Act. The petitioner has failed to show even a link of the returned candidate with the averments made in the election petition except using epithets. There are no material facts disclosing which corrupt practice or practices were committed by the returned candidate. All sorts of irrelevant scandalous and incidents of family affairs of the returned candidate or even his remotely connected relations have been reproduced in the election petition. It is most unfortunate and cannot by any standard be considered to be the relevant pleadings. The observations made by me find support from the observations made in *Samant N. Balakrishna etc. v. George Fernandez and others etc.* AIR 1969 S.C. 1201, 1970 Unreported Judgments 231, *Hardwari Lal v. Kanwal Singh*, AIR 1972 S.C. 515, *Roop Lal Sathi v. Nachhattar Singh* AIR 1982 S.C. 1559, and *Daulat Ram Chauhan v. Anand Sharma* AIR 1984 S.C. 621.

78. The anatomy of the election petition, assumed canker-ing of hustings even before the elections were declared, obloguy of the returned candidate, no facts can be recapitulated from reading the entire election petition, unerringly pointing out commission of any corrupt practice put forth by the petitioner in the course of arguments. The scurilous allegations are so interwoven with other averments, that it is impossible to segregate them. It discloses only the conclusion of the election petitioner as contemplated by him from various reports in the newspapers etc. No precise facts, confirming to the obvious features of corrupt practices, itemized and defined by Section 123 of the Act, or even equal to long consolidated action mentioned in the petition falls within the ambit of the Section, essential for setting aside an election. The petition hardly and not even scarcely shows an echo of elements of commission of corrupt be articulated or rewritten assuming what the petitioner practices by the returned candidate. The petition cannot had in mind, when it was not so expressed in it expressly. Imprecise averments cannot create facts which are conspicuously missing from it. Mere propensity or trails for

commission of corrupt practice by itself can be ground for setting aside an election.

79. On reading of the entire petition, one is left with no option but to style it as contents of a fiction. The style of drafting the petition also corroborates the above inference. It need not be emphasised that the averments made in the petition are too vague and amount to taking a chance to make a roving and fishing enquiry which is not permissible under the election law. The elective enterprises are not permissible in the Courts. I have failed to comprehend how the reports in the news papers or reports by the Committee of social workers or their inferences constitute a pleading of a fact when they are not even a substantive piece of evidence. The pleadings as pointed out from time to time in the course of my judgment are nabalous, obscure, oscillating, speculative and are in the nature of inferences. It may be noticed at this stage that a feeble and half hearted attempt was made while making submissions by the petitioner that the documents referred to in the pleadings be considered as part of the pleadings. The contention has been noted and rejected for the reasons recorded above and additionally it may be noticed that they do not form part of the election petition not the petitioner intended to do so which is glaringly obvious as none of them has been verified as envisaged by Section 83 of the Act. "Still even if they are accepted to be forming part of the pleadings, they do not improve the petition in any manner. They do not contribute any material fact disclosing any cause of action to the petitioner.

80. In view of the observations made above except for the peculiar events disclosed or any facts stated with high sounding adjectives, it does not disclose any cause of action. The petition is liable to be dismissed with costs. I order accordingly.

February 20th, 1991.

Sd/-

M. S. LIBERHAN, Judge

